

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 April 2024

DOCKET NUMBER: AR20230008428

APPLICANT REQUESTS: correction of his records to show he declined to participate in the Survivor Benefit Plan (SBP) with spousal concurrence.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record under the Provisions of Title 10, U.S. Code, Section 1552)
- SBP Retiring Soldier Counseling Statement, 19 August 2021
- U.S. Army Human Resources Command (HRC) Orders 277-0006, 4 October 2022
- DD Form 2656 (Data for Payment of Retired Personnel), 21 October 2022
- Spouse's Notarized Acknowledgement, 25 October 2022

FACTS:

1. The applicant states he and his spouse declined SBP coverage at the Fort Irwin, CA, Transition Center. He submitted notarized paperwork with his spouse's concurrence to the transition counselor; however, the Defense Finance and Accounting Service (DFAS) still automatically enrolled him in the SBP. He did not wish to participate in the SBP.
2. He and S____ L____ R____ married on 16 June 2013.
3. Following enlisted service in the Regular Army, he enlisted in the U.S. Army Reserve and was ordered to active duty in an Active Guard Reserve status on 1 October 2013.
4. On 19 August 2021, he completed an SBP Retiring Soldier Counseling Statement wherein he indicated "NA [not applicable]" for SBP Base Amount, SBP Annuity, and Monthly SBP Cost in paragraph 3.
5. HRC Orders 277-0006, 4 October 2022, reassigned him to the Fort Irwin Transition Center for processing and retired him effective 28 February 2023.

6. He provided his DD Form 2656, 21 October 2022, showing in:

a. Section I (Pay Identification), block 4 (Retirement/Transfer Date), he entered 1 March 2023;

b. Section X (SBP Election), block 34 (SPB Beneficiary Categories), he marked block 34g (I Elect Not to Participate in SBP);

c. Section XI (Certification), block 39 (Member), he signed and dated the form on 21 October 2022;

d. Section XI, block 40 (Witness), the Retirement Services Counselor signed and dated the form on 21 October 2022;

e. Part V (Spouse SBP Concurrence) notes: "Required ONLY when the member is married and elects either: (a) child only SBP coverage, (b) does not elect full spouse SBP coverage; or (c) declines SBP coverage. The date of the spouse's signature in Block 41c MUST NOT be before the date of the member's signature in Block 39c, or on or after the date of retirement listed in Part I, Section I, Block 4. The spouse's signature MUST be notarized.";

f. Section XII (SBP Spouse Certification), block 41 (Spouse), his spouse signed and dated the form on 25 October 2022. (The notary public and his spouse also signed an acknowledgement form.); and

g. Section XII, block 42 (Notary Witness), the notary public signed and dated the form on 25 October 2022.

7. HRC Orders 0004146267.00, 6 March 2023, placed him on the Retired List in the grade of master sergeant effective 1 March 2023.

8. Email correspondence from a DFAS Supervisor Military Pay Specialist, 31 October 2023, states the applicant was automatically enrolled in the SBP for "Spouse Only" coverage.

a. DFAS received a DD Form 2656 on 26 October 2022 with an election of spouse coverage.

b. DFAS received a second DD Form 2656 on 27 March 2023; this was declined due to it being altered and received after his retirement date.

c. If this was a counselor error and not the service member's, DFAS would need an administrative correction from his branch of service.

d. His file contains a DD Form 2656, 21 October 2022, showing the same elections as shown above with the exception of Section 10 (SBP Election), block 34 (SBP Beneficiary Categories), wherein he marked block 34a (I Elect Coverage for Spouse Only) and I have dependent child(ren) "No," and block 35a (I Elect Coverage Based on Full Gross Pay).

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the applicant's military records, the Board found that relief was warranted. The applicant's contentions, his military records, and regulatory guidance were carefully considered. The evidence shows the applicant was married when he retired in early 2023. He completed paperwork in 2022 including a DD Form 2656. He states in his application to the Board that he declined SBP with his spouse's concurrence. However, the form his transition counselor faxed to DFAS showed he elected SBP for his spouse. The applicant correctly points out that his spouse also signed the form which is only required when declining SBP. Furthermore, the SBP counseling statement indicates "NA" (presumably "not applicable") instead of estimated amounts. These are indications he declined SBP. He assumes his transition counselor sent the wrong version of page four to DFAS. The Board found the applicant's account to be credible and supported by the available evidence. Therefore, the Board determined relief is warranted.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by:

- showing the applicant timely completed and submitted a DD Form 2656 declining SBP coverage, with spouse concurrence prior to his retirement
- showing the appropriate office timely received and processed the applicant's DD Form 2656
- reimbursing the applicant any SBP premiums collected from his retired pay, as a result of this correction

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I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

REFERENCES:

1. Public Law 92-425, enacted 21 September 1972, established the SBP. The SBP provided that military members on active duty could elect to have their retired pay reduced to provide for an annuity after death to surviving dependents. An election, once made, was irrevocable except in very specific circumstances. The election must be made before the effective date of retirement or coverage defaults to automatic spouse coverage.
2. Title 10, U.S. Code, section 1448(a)(3)(A), requires spousal concurrence in any election not to participate in the SBP, to provide an annuity for a spouse at less than the maximum level, or to provide an annuity for a dependent child but not for the member's spouse.
3. Department of Defense Instruction 1332.42 (SBP) establishes policy, assigns responsibilities, and provides procedures for administration of the SBP Program, Reserve Component SBP Program, Special Survivor Indemnity Allowance, and SBP Advisory Group. Paragraph 4.2 (Spouse Concurrence Requirement) states written spousal concurrence is required when the member elects less than the maximum coverage. The signature of the spouse must be notarized on the DD Form 2656 on a date that is on or after the date the service member signed the form but before the date of retirement.
4. Public Law 105-85, enacted 18 November 1997, established the option to terminate SBP participation. Retirees have a 1-year period beginning on the second anniversary of the date on which their retired pay started to withdraw from the SBP. The spouse's concurrence is required. No premiums will be refunded to those who opt to disenroll. The effective date of termination is the first day of the first calendar month following the month in which the election is received by the Secretary concerned.

//NOTHING FOLLOWS//